

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|   |   |                 |
|---|---|-----------------|
| THE APPLICATION OF KENTON COUNTY WATER    | ) |                 |
| DISTRICT NO. 1 (A) TO ISSUE REVENUE BONDS | ) |                 |
| IN THE APPROXIMATE PRINCIPAL AMOUNT OF    | ) |                 |
| \$2,335,000 (B) TO CONSTRUCT ADDITIONAL   | ) |                 |
| PLANT FACILITIES OF APPROXIMATELY         | ) | CASE NO. 89-179 |
| \$2,032,000 (C) SUBMISSION OF CONTRACT TO | ) |                 |
| SUPPLY ADDITIONAL WATER (ENTIRE DEMAND)   | ) |                 |
| TO CAMPBELL COUNTY KENTUCKY WATER         | ) |                 |
| DISTRICT                                  | ) |                 |

O R D E R

On January 31, 1990, the Commission denied the application of Kenton County Water District No. 1 ("Kenton District") for a Certificate of Public Convenience and Necessity to expand the capacity of its Fort Thomas Water Treatment Plant from 33 million gallons per day (MGD) to 44 MGD and for authority to issue \$2,335,000 of waterworks revenue bonds to finance this expansion. After considering the water production facilities of all public and municipal utilities in the northern Kentucky region, the Commission found that these were adequate to meet the region's projected peak demands until the late 1990s and that the proposed expansion would result in excess water production capacity.

Kenton District successfully brought an action for review of the Commission's denial. Vacating the Commission's Order, Franklin Circuit Court found that the Commission erred in considering the water production facilities of the city of Newport in reaching a decision on Kenton District's application. It remanded the matter

to the Commission with expressed instructions that Kenton District "be authorized to construct and fund the proposed expansion of its water treatment facilities." Campbell County Ky. Water Dist. and Kenton County Water Dist. No. 1 v. Pub. Serv. Comm'n, Civil Action Nos. 90-CI-0261 and 90-CI-0459 (Franklin Cir. Ct. Sept. 17, 1990), 9.

The Commission appealed from the Franklin Circuit Court judgment. Agreeing with the lower court's finding that consideration of municipal utility facilities was reversible error, the Kentucky Court of Appeals affirmed. It declared:

We are also convinced, based upon the reasoning in City of Covington v. Board of Commissioners of Ky. Water District No. 1, Ky., 371 S.W.2d 20 (1963), (overruled on other grounds), that it was unreasonable for the Public Service Commission to deny Kenton County approval to construct additional facilities based on an evaluation of an unregulated utility. As stated in Covington, an unregulated utility cannot be considered an adequate substitute for a proposed regulated facility because there is no assurance that it will continue to make its water supply available nor does the Public Service Commission have authority to order an unregulated entity to furnish water.

Pub. Serv. Comm'n v. Campbell County Ky. Water Dist., Nos. 90-CA-2303-MR and 90-CA-2337 (Ky. Ct. App. May 8, 1992), at 3.

If the facilities of nonjurisdictional utilities are excluded from consideration, the record which existed on January 30, 1990 shows that the public convenience and necessity require the proposed construction. Kenton District's existing facilities have a total rated capacity of 43.5 MGD and a maximum sustainable capacity of 47 MGD. The combined peak demand of Kenton District

and Campbell County Kentucky Water District ("Campbell District") currently exceeds Kenton District's rated water treatment capacity.<sup>1</sup> If the concept of maximum sustainable capacity is used, the water districts' projected demand will surpass Kenton District's existing capacity by 1995.<sup>2</sup>

The Commission emphasizes that our finding that the public convenience and necessity require the proposed expansion is predicated upon the assumption that Campbell District will purchase its total water requirements from Kenton District. Kenton District has stated that the sole reason for the proposed expansion is to serve Campbell District.<sup>3</sup> Any change in Campbell District's decision to purchase its total water requirements from Kenton District will significantly disturb this finding. Should Campbell District repudiate or take any action which indicates its intention to repudiate the purchase water agreements of September 27, 1988 and June 10, 1992, Kenton District should immediately advise the Commission of that action and should cease all efforts which, if continued, would lead to the construction of unnecessary utility facilities.

Finally, the Franklin Circuit Court's judgment requires the Commission to examine the effects of the implementation of the September 27, 1988 Agreement and "to promulgate fair and reasonable rates for Kenton [District] to charge its customers." Campbell

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<sup>1</sup> Application of Kenton District, Exhibit F at 4.

<sup>2</sup> Id.; Transcript of Record at 50-51.

<sup>3</sup> Application of Kenton District, Exhibit F at 2.

Dist. v. Pub. Serv. Comm'n at 9. The Commission will initiate an investigation into Kenton District's rates upon notification that the September 28, 1988 Agreement has been implemented.

IT IS THEREFORE ORDERED that:

1. Kenton District is granted a Certificate of Public Convenience and Necessity to proceed with the proposed construction project as set forth in the drawings and specifications of record herein.

2. Any deviation from the proposed construction project which may adversely affect service to any customer shall not be performed without prior Commission approval.

3. Kenton District shall furnish a verified statement of the total cost of this project including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the substantial completion of construction. All construction shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for Water Utilities prescribed by the Commission.

4. Kenton District's contract with its engineers shall require resident inspection under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering to ensure that the construction work is performed in accordance with the contract drawings and specifications and in conformance with the best practices of construction trades involved in the project.

5. Kenton District shall require its engineer to furnish a copy of the "as built" drawings and a signed statement that construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of this construction.

6. Kenton District is authorized to issue revenue bonds in the approximate amount of \$2,335,000. The proceeds of this bond issuance shall be used only for the purposes set forth in Kenton District's application.

7. Within 20 days of the date of revenue bond issuance, Kenton District shall furnish the Commission with a debt service schedule which lists the date for each debt service payment, the amount of principal and interest payment. It shall also furnish a statement of sources and uses of funds.

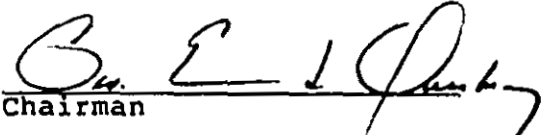
8. Within 10 days of the implementation of the September 28, 1988 Agreement, Kenton District shall advise the Commission in writing that Campbell District has begun purchasing its total water requirements from Kenton District.

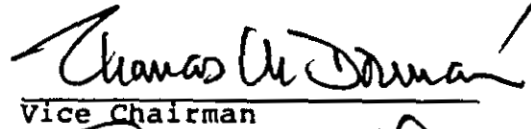
9. Should Campbell District repudiate or take any action which indicates its intention to repudiate the purchase water agreements of September 28, 1988 or June 10, 1992, Kenton District shall immediately advise the Commission in writing.

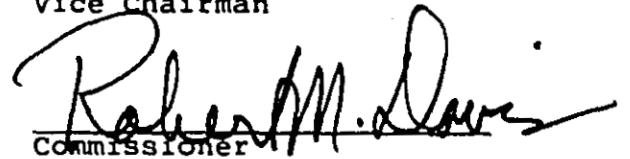
Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

Done at Frankfort, Kentucky, this 25th day of January, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director